



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2004

Mr. Russell Brown  
Manager of Information Services  
City of Bellaire Police Department  
5110 Jessamine  
Bellaire, Texas 77401-4495

OR2004-9270

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212123.

The Bellaire Police Department (the "department") received four requests from the same requestor for specified "Calls for Service" reports. We note that upon receipt of the requests the department was required to either release the requested information or seek a decision from us pursuant to section 552.301 of the Government Code as to whether it could withhold any portion of the information based on exceptions to disclosure that the department believed were applicable to the information. *See* Gov't Code § 552.301. Although you timely submitted to us copies of the written requests for information, a signed statement or evidence sufficient to establish the date that the department received the requests, and information that is responsive to the requests, you failed to date to state any exceptions to disclosure that the department believed were applicable to the requested information. Further, you have failed to date to provide us with written comments stating the reasons why such stated exceptions to disclosure would allow any portion of the requested information to be withheld from the requestor. *See* Gov't Code § 552.301(a), (b), (e). Therefore, since the department did not request a decision from us with regard to the requested information in compliance with section 552.301 of the Government Code, the information is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). We note that a compelling interest must exist in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest exists when some other source of law makes the requested information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Based on our review of the submitted information, we find that portions of this information are

made confidential by another source of law.<sup>1</sup> Accordingly, we will address the applicability of sections 552.101 and 552.130 of the Government Code to the submitted information.

Initially, we note that criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Further, when a governmental entity compiles information that relates to a specific individual as a criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). Accordingly, we conclude that to the extent that the requested information contains CHRI that is confidential under federal law, chapter 411 of the Government Code, or the common-law right to privacy on the basis of *Reporters Committee*, the department must withhold such information pursuant to section 552.101 of the Government Code.

Next, we note that portions of the submitted information that we have marked are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>2</sup> Information must be withheld on the basis of the common-law right to privacy when it (1) contains highly intimate or embarrassing facts, the

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<sup>1</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). Accordingly, we conclude that the department must withhold this particular marked information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Finally, we note that portions of the remaining submitted information that we have marked are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to: “(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.” Gov't Code § 552.130(a)(1)-(3). Accordingly, we conclude that the department must withhold this particular marked information pursuant to section 552.130 of the Government Code.

In summary, to the extent that the requested information contains CHRI that is confidential under federal law, chapter 411 of the Government Code, or the common-law right to privacy on the basis of *Reporters Committee*, the department must withhold such information pursuant to section 552.101 of the Government Code. The department must also withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy and section 552.130 of the Government Code. The department must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 212123

Mr. Russell Brown - Page 5

Enc. Marked documents

c: Ms. Adriene Anderson  
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